BEFORE THE NATIONAL LABOR RELATIONS BOARD

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 513, AFL-CIO	)	
and	)	Case 14-CB-10424
OZARK CONSTRUCTORS, LLC, A FRED WEBER – ASI JOINT VENTURE	)	

ANSWERING BRIEF OF CHARGING PARTY OZARK CONSTRUCTORS, LLC

COMES NOW the Charging Party Ozark Constructors, LLC (hereinafter "Ozark"), pursuant to Section 102.46 of the Rules and Regulations of the National Labor Relations Board (hereinafter the "Board"), and for its Answering Brief to Respondent's Exceptions in the above-referenced matter, states as follows:

I. INTRODUCTION

Administrative Law Judge Michael A. Rosas (hereinafter the "ALJ") correctly found that Local 513 violated Section 8(b)(1)(A) of the National Labor Relations Act (hereinafter the "Act") by charging and fining Ozark employee Mark Overton (hereinafter "Overton") for his report of a safety violation.[1] It is well-established that Section 7 of the Act protects an employee, like Overton, who complies with a work rule or his obligations under a collective bargaining agreement in reporting a safety violation. The undisputed evidence in this case demonstrates that both Ozark's work rules and the collective bargaining agreement required Overton to report his co-employee's safety violation. The General Counsel proved that Overton's report of the safety violation motivated the Union to charge and fine him. The Union introduced no evidence to the contrary, and, in fact, admitted that Overton's report of the safety infraction was the "last straw" leading to its discipline against him. Further, notwithstanding its argument to the contrary, Local

[1] Respondent is referred to as "Local 513" or "the Union."

513's own self-serving and unsupported allegations of Overton's "abusive" behavior, set forth in its position statement, did not defeat the overwhelming record evidence of the Union's unlawful motive.

This case involves the rather unusual scenario of a labor organization arguing to narrowly construe (rather than to broadly interpret, as the law requires) the type of conduct that is protected by Section 7. The Union seeks to have the Board ignore and/or overrule an entire body of Board case law and eviscerate the well-settled notion that a union violates the Act by disciplining a member for fulfilling obligations set by work rules and/or the collective bargaining agreement.

The General Counsel met its burden of proving its prima facie case, which the Union offered no evidence to rebut. Overton's report of the safety violation was protected and concerted Section 7 conduct, for which Overton was unlawfully disciplined by the Union. Accordingly, the Board should affirm the ALJ's Decision, without exception.

II. STATEMENT OF THE CASE

Because Local 513 chose not to introduce evidence at the hearing, the facts of this case are largely undisputed. The Union retaliated against Overton for doing his job and reporting a worksite safety violation by Ryan Allison (hereinafter "Allison"), a Local 513 member. By way of background, Overton and Allison work on Ozark's project to rebuild the Taum Sauk Upper Reservoir (hereinafter the "Project"). (Tr. 34). Overton is a "traveler" who joined the Project in late 2007, working as a telebelt trainer and operator; he became a working foreman in September 2008. (Tr. 38, 74-75, 100-103).

Local 513 has, on a number of occasions, expressed displeasure with the fact that travelers are working on the Project. (Tr. 39-40). Roger Gagliano (hereinafter "Gagliano"),

Ozark's Construction Manager, testified that Local 513 wants its own members (and not travelers) operating Ozark's equipment. (Tr. 39-40). Local 513's business agent Steve Gunter (hereinafter "Gunter") refers to the travelers as "ASI cronies" and has stated that he wants to get them off the job. (Tr. 40, 67-68). As evidence of its animosity toward travelers, Local 513 refused Overton's request to transfer his membership and allowed him to work on the Project only by virtue of a permit it issued. (Tr. 103; G.C. Ex. 1(d) at ¶5.C; G.C. Ex. 1(g) at ¶5.C). As a traveler working on the Project, Overton is subject to Ozark's work rules and to the terms of the collective bargaining agreements.

Ozark's work rules and the governing collective bargaining agreement required all Project employees to report unsafe conditions. (Tr. 43; G.C. Ex. 4; G.C. Ex.6.). On or about November 20, 2008, Overton observed the telebelt that Allison had recently operated with its outrigger not fully extended. (Tr. 110). Allison's failure to fully extend the outrigger was an obvious and serious safety violation that Overton was required to report. (Tr. 111, 147, 152). Accordingly, Overton reported the incident to Jim Andrews, Ozark's head safety man, and to his supervisor Andy Westbrook (hereinafter "Westbrook").[2] (Tr. 60-61, 111-112, 115-116, 151-152). After an investigation conducted by Ozark, Allison received a three-day suspension. (Tr. 59, 151-154).

Ozark faxed a copy of Allison's suspension letter to Gunter on Friday, November 21, 2008. (G.C. Ex. 14). On Monday, November 24, 2008, just one business day after the Union received Allison's suspension letter, Local 513 filed charges against Overton, alleging "gross

[2] Indeed, any Ozark employee—not just a working foreman—would have been required to report the incident. (Tr. 61). The fact that this job requirement was not unique to a working foreman does not, as the Union suggests, convert the Union's discipline of Overton from unlawful to lawful. Simply put, Overton was charged and fined for following Ozark's work rules and the collective bargaining agreement.

disloyalty or conduct unbecoming a member." (Tr. 117-118; G.C. Ex. 8B). Gunter's letter describing the Union charges specifically references Overton's report of the Allison safety violation as a primary basis for bringing charges against Overton. (G.C. Ex. 8B). Subsequently, Local 513 fined Overton $2,500.00. (Tr. 120; G.C. Ex. 13). Based upon the Union's unlawfully motivated charges and fine against Overton, Ozark filed an unfair labor practice charge against the Union. After a hearing (at which Local 513 presented no evidence), the ALJ found in favor of the General Counsel, determining that the Union violated Section 8(b)(1)(A) of the Act.

III. ARGUMENT

Ozark's work rules and the governing collective bargaining agreement required Overton to report Allison's safety violation to his supervisor, which constituted concerted activity protected by Section 7. As a direct result of such protected activity, the Union charged and fined Overton, violating his Section 7 rights. The Union admitted that Overton's report of Allison's infraction was the "last straw" that resulted in the issuance of internal charges against Overton. At the hearing, the Union introduced no evidence and, thus, failed to rebut the clear and unlawful nexus between Overton's report and the Union's discipline.

A. Overton's Report of Allison's Safety Violation Constitutes Concerted Activity Protected by Section 7.

i. The Board has recognized that Section 7 protects an employee who reports a safety violation, as required by work rule or collective bargaining agreement, from retaliatory Union discipline. (Response to Exceptions 1-3)

The Union argues, incorrectly, that Overton's conduct was not "protected and concerted activity" covered by Section 7. Essentially, the Union contends that Overton "acted alone" and did not report the safety violation on behalf of or in connection with any other employees. Such a narrow interpretation of Section 7 contravenes the spirit of the Act and has been previously rejected by the United States Supreme Court, which has explicitly recognized that the actions of

a lone employee can amount to concerted activity protected by Section 7. NLRB v. City Disposal Systems, Inc., 465 U.S. 822, 850 (1984). In light of this clear and binding precedent, the Board has consistently found that an employee, like Overton, who complies with an employer's rule or collective bargaining obligation to report co-employee misconduct, is protected from union discipline. See General Teamsters Local No. 439, 324 NLRB 1096, 1098 (1997); San Diego County District Council of Carpenters (Hopeman Brothers, Inc.), 272 NLRB 584, 587 (1984).

In this unusual case, Local 513, a labor organization, argues for a narrow construction of Section 7's protective scope. The Union contends that simply because Overton "acted alone," his conduct cannot have been "concerted." In City Disposal, the United States Supreme Court squarely rejected this narrow and overly simplistic construction of the term "concerted activity," noting that "the language of Section 7 does not confine itself to such a narrow meaning." 465 U.S. at 831. Instead, the Court affirmed the Board's finding that an employee engaged in "concerted activity" when he alone refused to drive a truck he deemed unsafe. Id. The Court reasoned: "When an employee invokes a right grounded in the collective-bargaining agreement, he does not stand alone." Id. at 850. Notably, since City Disposal, the Court has not revisited its interpretation of the term "concerted activity," and Congress has not amended the language of Section 7 of the Act.

Ignoring the Supreme Court's binding precedent, the Union argues that the Board decisions and case law on which the ALJ relied are outdated and inconsistent with the Board's "post Meyers" interpretation of Section 7. (Resp. Br. 7). This contention is simply incorrect. First, City Disposal remains good law, and subsequent Board decisions, including Meyers II, clearly acknowledge the well-established notion that a union violates the Act by disciplining a

member for fulfilling obligations set by work rules and the collective bargaining agreement. See, e.g., Meyers Indus., Inc. v. Prill (Meyers II), 281 NLRB 882 (1986). Second, the cases cited in the Union's Brief simply do not involve the facts presented here; they do not involve discipline against an employee-member who complied with an employer work rule or exercised a right grounded in a collective bargaining agreement. In Meyers II, the Board determined that an employee's report of unsafe work conditions to management and authorities was not "concerted activity" only because the collective bargaining agreement did not address such a report (nor was such a report required by work rule). Id. at 888. The Board explicitly acknowledged the Court's decision in City Disposal, agreeing that "invocation of employee contract rights are a continuation of an ongoing process of employee concerted activity." Id. at 888.

Likewise, the remaining cases cited in the Union's Brief do not involve conduct required by work rule or arising from a collective bargaining agreement. In Internat'l Trans. Serv., Inc. v. NLRB, 449 F.3d 160, 166 (D.C. Cir. 2006), the D.C. Circuit found that an employee who picketed alone for recognition of the union as her personal bargaining representative did not engage in protected activity because "she did not assert a right obtained under a collective bargaining agreement through prior group action, as had the employee in City Disposal." Similarly, in E.I. du Pont de Nemours and Co., Inc. v. NLRB, 707 F.2d 1076, 1079 (9th Cir. 1983), the Ninth Circuit held that a non-union employee's request to have another employee present during an employer interview was not "concerted activity" as there was no collective bargaining agreement and no "history of group activity . . . to endow the request in a nonunion setting with [Section 7] protection." Further, E.I. du Pont was decided prior to City Disposal, and the Ninth Circuit specifically mentioned the Supreme Court's impending consideration of City Disposal as the source for guidance in construing the term "concerted activity" in future

cases. Id. Finally, it is utterly unclear how Susan Oles, DMD, Strickland and Williams, 354 NLRB No. 13 (April 30, 2009), lends any support to the Union's argument. In that case, the Board held that five employees of a dentist office engaged in "concerted activity" when they signed a letter explaining work-related complaints to their supervisors.

In stark contrast to the cases cited in the Union's Brief, the cases upon which the ALJ relied accurately reflect governing Section 7 law and support the ALJ's decision in this case. For example, the case of NLRB v. General Teamsters Local No. 439, 175 F.3d 1173 (9th Cir. 1999), affirming 342 NLRB 1096 (1997), is squarely on point with the present case.[3] That case involved the union's discipline of its member, Luis Rojas. Id. at 1174-1175. Part of Rojas' job responsibilities included monitoring the work of employees in his group, and he was required to report any problems, such as unsafe work practices, employees taking long breaks, or employees' non-performance of their job. Id. at 1174. Rojas observed two custodial employees taking a break when they were supposed to be working. Id. As he was required to do, Rojas reported the incident to company management, who in turn disciplined the two offending employees. Id. Shortly thereafter, the union filed internal charges against Rojas for "turning in union members to management for disciplinary action..." Id. The charges ultimately resulted in a monetary fine against Rojas. Id.

The Ninth Circuit, in upholding the NLRB's underlying decision, held that "a union commits an unfair labor practice if it disciplines a member who reports the work rule infractions of co-workers to his employer when that member is required to do so by his employer." Id. at

[3] General Teamsters was decided and affirmed more than ten years after Meyers II, the primary case cited by the Union. Thus, Local 513's contention that the "definition of 'concerted activity'

1175. The Court in the General Teamsters case concluded that "the Board has reasonably interpreted section 8(b)(1)(A) as prohibiting unions from disciplining a member for reporting co-worker misconduct, where the member is required to do so by his employer." 175 F.3d at 1176. Further, the Court stated:

> A member's compliance with a union directive that is contrary to that member's job duties clearly affects that member's employment status in that it may cause him to lose his job or to be otherwise reprimanded. When a union punishes a member for complying with his employer's instructions, it is no longer regulating its purely internal affairs, but enforcing a rule with external effects, i.e., enforcing a rule that affects an employee's relationship with his employer, which is prohibited by section 8(b)(1)(A). Id. (citation omitted).

Ultimately, the Ninth Circuit found that because the union's discipline of Rojas affected his employment status, the Board properly held that the union violated Section 8(b)(1)(A) of the Act. Id. at 1177.

Similarly, in San Diego County District Council of Carpenters (Hopeman Brothers, Inc.), 272 NLRB 584 (1984), the Board found that a union violated Section 8(b)(1)(A) when it brought charges against and fined an employee-member who reported a co-employee's misconduct. The Board found that, although not related to the "traditional" protected activities, an employee-member's decision to report his co-employee fell within the scope of Section 7's protection, nonetheless, because the Union's discipline directly affected the employee-member's employment status. Id. at 588. Moreover, because the employee was faced with a Hobson's choice—risking Union discipline if he chose to report the incident and employer discipline if not—the Union could not successfully couch its discipline as an "internal union matter" within the 8(b)(1)(A) proviso. Id.; see also Industrial Union of Marine & Shipbuilding Workers of

---

was in flux" and, therefore, Meyers II should somehow trump the Board precedent cited in the

America, Local No. 9, 279 NLRB 617 (1986); Local 604, Int'l. Chem. Workers, 233 NLRB 1239 (1977), enf'd. 588 F.2d 835 (7th Cir. 1978).

In addition to employees who report infractions pursuant to their employer's work rules, the Act also protects an employee who reports a safety violation pursuant to his rights under a collective bargaining agreement. Board decisions have consistently followed City Disposal in this regard. For example, in Brewery, Soda, and Mineral Water Bottlers of California, Local Union No. 896 (Anheuser-Busch, Inc.), 339 NLRB 769, 769-770 (2003), the Board found that the union violated Section 8(b)(1)(A) where the union threatened discipline against union members who complied with their responsibilities under their collective bargaining agreement and reported fellow members implicated in safety violations. The Board reasoned such union discipline would restrain and coerce employees' exercise of their Section 7 rights to complain to management about safety violations and would force the employees to act in contravention of the collective bargaining agreement itself.

ii. Ozark's work rules and the NMA required Overton to report Allison's safety violation; thus, Overton engaged in protected activity. (Response to Exceptions 7- 8)

The Board has found that a union infringes an employee-member's Section 7 rights when it disciplines an employee-member for following an employer work rule or exercising his rights under a collective bargaining agreement. Here, both the work rules and the applicable collective bargaining agreement required Overton to report the safety violation. Accordingly, the Union's discipline of Overton violated the law.

The requirements for reporting safety violations are demonstrated by the clear and undisputed record evidence. According to Ozark's work rules, as conveyed during the New

---

ALJ's Decision, is illogical and baseless. (Resp. Br. 7).

Employee Safety Orientation, employees "**MUST** report all accidents/incidents to their supervisor immediately, no matter how slight." (G.C. Ex. 6, p. 3)(emphasis in original). Also, employees "**MUST** report or immediately correct any and all unsafe conditions or hazards encountered while working on" the Project. (G.C. Ex. 6, p. 3)(emphasis in original). Overton reported the safety violation because that is what he was supposed to do (i.e., he was required to report the safety infraction). (Tr. 60-61, 115-116). It is undisputed that Overton would have been disciplined by Ozark had he failed to report a safety infraction. (Tr. 154).

Further, the collective bargaining agreement required Overton to report the incident. With respect to the Project, Ozark and the Union's parent, the International, are parties to a collective bargaining agreement called the National Maintenance Agreement (hereinafter "NMA"), which covers work of the type performed on the Project on a national scope. (Tr. 36; G.C. Ex. 4). The NMA recognizes the general concern for "[s]afety in all phases of work." (G.C. Ex. 4). Specifically, Article XVII of the NMA states that "[t]he employees covered by the terms of this Agreement shall at all times while in the employ of the Employer be bound by the safety rules and regulations as established by the Owner, the Employer, this agreement, or by applicable Safety Laws." (G.C. Ex. 4, p. 11).

Thus, the record clearly demonstrates that Overton was faced with Hobson's choice. That is, he risked Union discipline if he reported the safety violation, and employer discipline if he did not. See Anheuser-Busch, 339 NLRB at 769. The Union's discipline of Overton was directly contrary to Overton's "basic Section 7 right to concertedly address [his] Employer about [his] safety concerns." Id. at 770. Overton had a duty—and a right—to report the safety infraction to Ozark. It is undisputed that Ozark has a work rule requiring employees to report unsafe conditions to company management. Further, the NMA specifically requires bargaining

unit employees—such as Overton—to follow Ozark's safety rules. Thus, Overton exercised rights firmly grounded in the NMA when he reported the safety violation. See City Disposal, 465 U.S. at 831-32. Accordingly, Overton was engaged in Section 7 activity when he reported, as required, Allison's safety violation, and the Union's discipline of Overton violated his Section 7 rights.

B. The Undisputed Evidence Demonstrates a Nexus Between Overton's Section 7 Protected Activity and the Union's Disciplinary Action.

i. The General Counsel met its burden, establishing that Local 513 disciplined Overton because he reported a safety violation. (Response to Exception 6)

In the present case, the General Counsel proved its prima facie case, as the undisputed evidence shows that the Union's discipline of Overton was motivated by his report of Allison's safety infraction. The Union's unlawful motivation is supported by both direct and indirect evidence. In terms of direct evidence, the Union has admitted a nexus between Overton's report and the Union's charges against Overton. Gunter's letter bringing the charges (G.C. Ex. 8B) specifically references Overton's involvement in the Allison incident. The Union's position statement (G.C. Ex. 17) also illustrates that nexus. Moreover, the Union's counsel, at the hearing, admitted that Overton's report of the Allison incident was the "final straw" leading to the Union's disciplinary action. (Tr. 89). In terms of indirect evidence, the timing of the Union's charges (one business day after Gunter received the Allison suspension letter) is compelling evidence of the Union's unlawful, retaliatory intent.

Further, the Union's proffered reason for the charges (i.e., Overton's so-called "abusive" behavior) is completely unsupported by the record. Indeed, if Gunter or Local 513 truly had problems with Overton's treatment of Local 513 members, Gunter had multiple avenues to raise any such problems. Gagliano has known Gunter for two years as a result of the Project and

maintains an open-door policy on the Project site. (Tr. 61-62). Gunter comes to the Project site approximately once a week and regularly speaks to Gagliano. (Tr. 62). Also, Ozark conducts a monthly tripartite meeting with Ameren (the Project owner) and the unions to discuss jobsite issues such as safety, work rules, absenteeism, etc. (Tr. 62, 64-65). Likewise, Gagliano is part of the Ozark's team that addresses grievances (as set forth in the NMA). (Tr. 66). In the past, Gunter (on behalf of Local 513) has filed at least half a dozen grievances that have been handled by Gagliano, yet Local 513 did not file a grievance at any time regarding the actions of Overton. (Tr. 66, 68). Despite multiple avenues for Gunter to raise any problems Local 513 members allegedly had with Overton, Gunter never mentioned to Gagliano any problems with Overton until after Ozark filed its unfair labor practice charge in this case. (Tr. 63, 65-66).

Because the General Counsel fulfilled its burden, by establishing a prima facie case that Overton's report of a safety violation, protected by Section 7, motivated the Union's action against Overton, the burden shifted to the Union to "show conclusively that it would have undertaken the disciplinary action even if" Overton's report had not been made. NLRB v. Int'l Ass'n of Bridge, Structural and Ornamental Iron Workers, 864 F.2d 1225, 1231 (5th Cir. 1989). The Union did not put on a case at the hearing; thus, it failed to meet its burden and failed to rebut the General Counsel's evidence.

ii. The Union did not meet its burden by standing on its position statement. (Response to Exceptions 4-5)

At the hearing, the Union introduced no evidence. Instead, the only "facts" arguably in support of the Union's position (i.e., that Overton was disciplined for allegedly "abusive" behavior) are contained in a conclusory, self-serving position statement prepared by the Union's counsel. Strikingly, that position statement concedes a nexus between the Union's discipline of Overton and Overton's report of the Allison incident, calling it "simply another incident of Mr.

Overton being abusive to fellow members." (G.C. Ex. 17). Apparently, the Union thinks that an employee's actions in following mandatory work rules and exercising rights under a collective bargaining agreement amount to "abusive behavior." The General Counsel clearly offered the position statement as evidence to contradict the Union's false argument that safety reports played no role in the discipline of Overton. At no point did the General Counsel or Ozark's counsel concede that the entirety of the Union's position statement was to be accepted as uncontroverted "fact," especially when all of the testimony contradicted the crux of the position statement. In sum, the position statement constituted an admission by the Union that, at least in part, explains that its motivation for charging Overton was due to his decision to report Allison's safety infraction.

The ALJ properly determined that the vague and unsubstantiated allegations of "abusive" behavior in Local 513's position statement carry little evidentiary "weight." Although statements prepared by counsel are admissible, they are useful only to provide general background information or to show an admission against interest.[4] See NLRB v. United Sanitation Service, 737 F.2d 936, 940 (11th Cir. 1984); see also Ashley Furniture Industries, Inc. *and* Voces de la Frontera, 353 NLRB No. 71 (2008). The Board has acknowledged that such statements "are at least second-hand and subject to imprecision, given that the attorney authoring the document is not percipient to the event itself." Ashley Furniture, at Note 3. In the absence of

[4] Cases cited in the Union's Brief do not support its contention that unsubstantiated allegations in a position statement can satisfy its burden. See, e.g., Evergreen Am. Corp., 348 NLRB 178, 186-88 (2006)(allowing position statements to be admitted, but not deciding whether unsupported allegations in the position statement can satisfy a respondent's burden or determining what evidentiary weight the position statements should carry). In fact, the Union cites Menz v. New Holland North America, Inc., 507 F.3d 1107, 1113 (8th Cir. 2007), in which the Eighth Circuit expressly rejected a plaintiff's attempt to contradict live witness testimony by submitting his own affidavit. That case supports the ALJ's finding that Local 513's position statement cannot defeat the live, record testimony the General Counsel offered. (Decision, 11: 24-26).

hearing testimony, allegations in the Union's position statement amount to only pro forma assertions "which any well-counseled union would make." NLRB v. Int'l Ass'n of Bridge, Structural and Ornamental Iron Workers, 864 F.2d 1225, 1232 (5th Cir. 1989).

Moreover, contrary to the Union's contention, the record shows that the allegations of "abusive behavior" in the position statement did not go "undenied" or "unimpeached." (Resp. Br. 15). In fact, the General Counsel offered credible and unrefuted testimony from Overton, Gagliano, and Westbrook that there were no complaints by the Union or other employee-members regarding Overton's "abusive" behavior.[5] Gagliano testified that, despite the multiple times and manners by which the Union could have raised any complaint against Overton, the Union never reported Overton's "abusive" behavior until after Ozark filed its unfair labor charge in this case. (Tr. 63, 65-66). Likewise, Westbrook testified that, prior to the issuance of the unfair labor practice charge in this case, Local 513 had not raised any complaints about Overton's "abusive" conduct. (Tr. 156). The ALJ weighed this testimony against the vague and unsubstantiated allegations in the Union's position statement and concluded that Local 513's discipline of Overton was motivated by his reporting of Allison's safety infraction. (Decision, 11: 14-16). And, as shown, this factual conclusion is supported by undisputed evidence and should not be disturbed. See Board R&R 102.48(c).

Accordingly, the Union's argument that vague and unsupported allegations of Overton's "abusive" treatment of his co-workers in its position statement somehow defeat the General Counsel's prima facie case is unfounded. The record is clear: the Union's discipline of Overton was unlawfully motivated and, thus, constituted a violation of Section 8(b)(1)(A).

---

[5] Indeed, what the Union is asking the Board to do in this case is to overturn the ALJ's credibility findings on the three live witnesses and instead adopt the "facts" contained in a letter written by the Union's counsel.

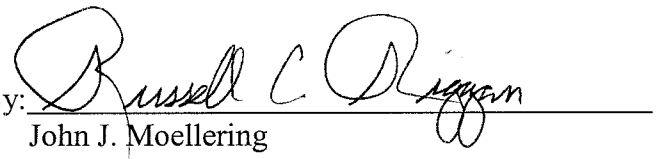
IV. CONCLUSION

For the foregoing reasons and for the reasons set forth in Ozark's Post-Hearing Brief, the Board should uphold the Administrative Law Judge's Decision and Order, in its entirety.

Respectfully submitted,

LEWIS, RICE & FINGERSH, L.C.

Dated: October 29, 2009

By: 

John J. Moellering
Russell C. Riggan
500 North Broadway, Suite 2000
St. Louis, Missouri 63102
(314) 444-7600 (telephone)
(314) 612-7784 (facsimile)

Attorneys for Ozark Constructors, LLC, a Fred Weber – ASI Joint Venture

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing Answering Brief of the Charging Party Ozark Constructors, LLC was filed electronically with the National Labor Relations Board and served via e-mail on this 29th day of October, 2009, to:

Jeffrey E. Hartnett
James P. Faul
Bartley Goffstein, L.L.C.
4399 Laclede Ave.
St. Louis, MO 63108
Attorneys for Respondent

Ralph R. Tremain
Regional Director
National Labor Relations Board
Region 14
1222 Spruce St., Rm. 8.302
St. Louis, MO 63103-2829